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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 TONAL MUSIC, INC., GUITAR CENTER,
15 INC.,

16 Defendants.

Case No.: CGC-23-609766

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: April 9, 2024

Hearing Time: 9:30 AM

Complaint Filed: October 16, 2023

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Tonal Music, Inc.
4 (“Tonal” or “Defendant”) with Espinoza and Defendant collectively referred to as the “Parties” and
5 each of them as a “Party.” Espinoza is an individual residing in California that seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. Tonal is alleged to be a person in the course
8 of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed
10 individuals in California to chromium (hexavalent compounds) (CrVI) from its sales of *Franklin*®
11 leather guitar straps, UPC # 069593017130, without providing a clear and reasonable warning
12 pursuant to Proposition 65. CrVI is listed pursuant to Proposition 65 as a chemical known to the
13 State of California to cause cancer and birth defects or other reproductive harm.

14 1.3 **Notice of Violation/Action.** On or about October 27, 2022, Espinoza served Guitar
15 Center, Inc. (“Guitar Center”), Tonal, and various public enforcement agencies with documents
16 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
17 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
18 customers that use of *Franklin*® leather guitar straps, UPC # 069593017130, can expose users in
19 California to CrVI. No public enforcer has brought and is diligently prosecuting the claims alleged
20 in the Notice. On October 16, 2023, Espinoza filed a complaint (the “Complaint”).

21 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
23 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
24 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
25 of all claims which were or could have been raised in the Action based on the facts alleged therein
26 and in the Notice.

1 1.5 Defendant denies the material allegations contained in Espinoza’s Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means *Franklin*® leather guitar
10 straps, UPC # 069593017130, that are manufactured, distributed, shipped into California and
11 offered for sale in California by Tonal that can expose user to CrVI.

12 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
13 entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
16 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
17 this §§ 3.1 and 3.2 must be provided for all Covered Products that Defendant manufacturers,
18 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant
19 to provide a warning for Covered Products that enter the stream of commerce prior to the date this
20 Consent Judgment is signed by both Parties. The warning shall consist of either the **Warning** or
21 **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

22 (a) **Warning.** The “Warning” shall consist of the statement:

23 ⚠ **WARNING:** This product can expose you to chemicals including chromium
24 (hexavalent compounds) (CrVI), which is known to the State of California to cause
25 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

26 (b) **Alternative Warning:** Tonal may, but is not required to, use the alternative short-
27 form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

28 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

1 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
2 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
3 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
4 triangle with a black outline, except that if the sign or label for the Covered Product does not use
5 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
6 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
7 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
8 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
9 displayed with such conspicuousness, as compared with other words, statements, or designs as to
10 render it likely to be read and understood by an ordinary individual under customary conditions of
11 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
12 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
13 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
14 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section
15 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Tonal shall
16 provide the **Warning** or **Alternative Warning** in the foreign language in accordance with
17 applicable warning regulations adopted by OEHHA.

18 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
19 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
20 Tonal offers Products for sale to consumers in California. The requirements of this Section shall be
21 satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
22 “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the
23 warning to the purchaser prior to completing the purchase including an option for the warning to
24 be provided via pop-up once a California zip code is included in the location for intended shipment
25 destination. To comply with this Section, Tonal shall (a) post the **Warning** or **Alternative**
26 **Warning** on its own website and, if it has the ability to do so, on the websites of its approved and
27 authorized third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or
28

1 **Alternative Warning** on the websites of its approved and authorized third-party internet sellers,
2 provide such sellers with written notice in accordance with Title 27, California Code of
3 Regulations, § 25600.2. Third-party internet sellers of the Covered Product that have been provided
4 with written notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not
5 released in Section 5 of this Agreement if they fail to meet the warning requirements herein as to
6 any products sold into California after ninety (90) days past the Effective Date.

7 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
8 compliance with this Consent Judgment by either adhering to §§ 3.2 and 3.3 of this Consent
9 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
10 Product and exposures at issue after the Effective Date. If OEHHA regulations require or permit
11 specific safe harbor warning text and/or methods of transmission different than those set forth
12 above, Tonal shall be entitled to use, at its discretion, such other specific safe harbor warning text
13 and/or methods of transmission without being deemed in breach of this Consent Judgment.

14 **4. MONETARY TERMS**

15 **4.1 Civil Penalty.** Tonal shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
16 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
17 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
18 Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

19 4.1.1 Within sixty (60) days of the Effective Date, Tonal shall issue two separate
20 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to (b)
21 “Gabriel Espinoza” in the amount of \$250.00. Payment owed to Espinoza pursuant to this Section
22 shall be delivered to the following payment address:

23 Evan J. Smith, Esquire
24 Brodsky Smith
25 Two Bala Plaza, Suite 805
26 Bala Cynwyd, PA 19004

27 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
28 to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following address(es):

For United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 P.O. Box 4010
5 Sacramento, CA 95812-4010

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 1001 I Street
11 Sacramento, CA 95814

12 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
13 above as proof of payment to OEHHA.

14 4.2 **Attorneys' Fees.** Within sixty (60) days of the Effective Date, Tonal shall pay
15 \$15,500.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and costs
16 incurred as a result of investigating, bringing this matter to the attention of Tonal, litigating and
17 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
18 of Civil Procedure § 1021.5.

19 **5. RELEASE OF ALL CLAIMS**

20 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
21 acting on his own behalf, and on behalf of the public interest, and Tonal, and its parents,
22 shareholders, members, directors, officers, managers, employees, representatives, agents,
23 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
24 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
25 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
26 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
27 retailers, including but not limited to, Guitar Center, and its parents, subsidiaries, and affiliates,
28 franchisees, cooperative members and licensees ("Downstream Releasees"), of all claims for
violations of Proposition 65 based on exposure to CrVI from use of the Covered Products
manufactured, distributed, or sold by Tonal prior to the Effective Date as set forth in the Notice. It
is the Parties' intention that this Consent Judgment shall have preclusive effect such that no other

1 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
2 interest shall be permitted to pursue and take any action with respect to any violation of Proposition
3 65 based on exposure to CrVI from use of the Covered Products that was alleged in the Complaint,
4 or that could have been brought pursuant to the Notice against Tonal and the Downstream Releasees
5 (“Proposition 65 Claims”). Tonal’s compliance with the terms of this Consent Judgment constitutes
6 compliance with Proposition 65 by Tonal with regard to exposure to CrVI from use of the Covered
7 Products.

8 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
9 agents, representatives, attorneys, and successors and assignees, and *not* in his representative
10 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
11 legal action and releases Tonal, Defendant Releasees, and Downstream Releasees from any and all
12 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
13 agreements, promises, liabilities, damages, fines, penalties, claims, charges, losses, costs, expenses,
14 and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or
15 contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to
16 or arising from Covered Products manufactured, distributed, or sold by Tonal, Defendant Releasees
17 or Downstream Releasees, including but not limited to all failure to warn claims, arising out of
18 alleged or actual exposures to any chemicals listed under Proposition 65 (including without
19 limitation to CrIV) in the Covered Products supplied or distributed by Tonal. With respect to the
20 foregoing waivers and releases in this paragraph, Espinoza hereby specifically waives any and all
21 rights and benefits which he now has, or in the future may have, conferred by virtue of the
22 provisions of § 1542 of the California Civil Code, which provides as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
24 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
25 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
26 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
27 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
28 DEBTOR OR RELEASED PARTY.

5.3 Tonal waives any and all claims against Espinoza, his attorneys and other
representatives, for any and all actions taken, or statements made (or those that could have been

1 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
3 and with respect to Covered Products.

4 **6. INTEGRATION**

5 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
6 any and all prior negotiations and understandings related hereto shall be deemed to have been
7 merged within it. No representations or terms of agreement other than those contained herein exist
8 or have been made by any Party with respect to the other Party or the subject matter hereof.

9 **7. GOVERNING LAW**

10 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California and apply within the State of California. In the event that Proposition 65 is repealed or
12 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
13 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
14 to the extent that, Covered Products are so affected.

15 7.2 If, after the Effective Date, a court enters judgment in the Actions or another
16 Proposition 65 enforcement action brought by Espinoza over exposure to CrVI in Covered Products
17 that imposes different injunctive relief from that set forth in this Consent Judgment, a Settling
18 Defendant may seek to modify Section 3 of this Consent Judgment to conform with the injunctive
19 relief provided in such later judgment.

20 **8. NOTICES**

21 8.1 Unless specified herein, all correspondence and notices required to be provided
22 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
23 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
24 by the other party at the following addresses:

25 For Defendant:

26 Ryan Landis
27 Gordon Rees Scully Mansukhani
28 5 Park Plaza, Ste. 1100
Irvine, CA 92614

1 And

2 For Espinoza:

3 Evan Smith
4 Brodsky Smith
5 9595 Wilshire Blvd., Ste. 900
6 Beverly Hills, CA 90212

7 Any party, from time to time, may specify in writing to the other party a change of address to
8 which all notices and other communications shall be sent.

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

10 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
11 which shall be deemed an original, and all of which, when taken together, shall constitute one and
12 the same document.

13 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
APPROVAL

14 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
15 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
16 Defendant agrees it shall support approval of such Motion.

17 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
18 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
19 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
20 days, the case shall proceed on its normal course.

21 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
22 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
23 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
24 its normal course on the trial court's calendar.

25 **11. MODIFICATION**

26 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
27 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.
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1 **12. ATTORNEY'S FEES**

2 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **14. AUTHORIZATION**

10 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood, and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **15. Public Benefit.** It is the Parties' understanding that the commitments Tonal has agreed to
16 herein, and actions to be taken by Tonal under this Consent Judgment, would confer a significant
17 benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code
18 tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates
19 an action alleging a violation of Proposition 65 with respect to Tonal's or Releasee's failure to
20 provide a warning concerning exposure to CrIV prior to use of the Products it has manufactured,
21 distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for
22 sale in California, such private party action would not confer a significant benefit on the general
23 public as to those Products addressed in this Consent Judgment, provided that Tonal is in material
24 compliance with this Consent Judgment.

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AGREED TO:

AGREED TO:

Date: _____

Date: 11/3/24

By: _____

By:

GABRIEL ESPINOZA

TONAL MUSIC, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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Date: _____

By: GABRIEL ESPINOZA

By: _____
TONAL MUSIC, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court